

REMARKS

As a preliminary matter, in the Office Action mailed January 23, 2006, the Examiner did not indicate that the two references in the "Other Documents" section of the PTO-1449 form mailed June 3, 2003 were considered and made of record by initialing the corresponding box on the PTO-1449 form. The Examiner also did not indicate that this reference was not in conformance with MPEP 609. As such, applicant respectfully request that the Examiner indicate that this reference has been considered and made of record.

Status of Claims

Claims 12-23 are pending in the application. No new matter has been added.

Office Action Summary

The Office Action states:

The amendment filed on 05/02/2006 canceling all claims drawn to the elected invention and presenting only claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because newly submitted claims 12-23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

(Office Action 7/25/06, pp. 2-3).

Interview Summary

Per a telephone call with the Examiner on August 2, 2006, it was agreed that the withdrawal of claims 12-23 were improper because the newly submitted claims 12-23 are

directed to the same invention originally filed on by the applicant as evidenced by the claims originally filed with the present application. It is submitted that such originally filed claims were acted on by the Office on their merits as evidenced by the first Office Action of April 9, 2003 and, therefore, the applicant's amendment adding claims 12-23 is proper under MPEP 818.02(a). As such, the newly added claims 12-23 in applicants' amendment filed on 5/2/06, and arguments in regards thereto, was responsive to the Office Action of January 23, 2006. The Examiner agreed to enter the amendments and issue a new Office Action on the case.

If the Examiner believes another telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Daniel Ovanezian at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 8/3, 2006


Daniel E. Ovanezian
Registration No. 41,236

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300

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Date